

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,588

IN THE MATTER OF:

Served September 24, 2008

METRO HEALTH-TECH SERVICES INC.,)	Case No. MP-2008-057
WMATC No. 589, Investigation of)	
Violation of Article XI,)	
Section 5(a), of the Compact)	

This matter is before the Commission on the response of respondent to Order No. 11,207, served March 6, 2008, which directed respondent to produce its vehicles for inspection by Commission staff.

I. BACKGROUND

Article XI, Section 5(a), provides that each authorized carrier shall provide safe and adequate transportation service, equipment, and facilities.

On November 9, 2007, the Commission received a fax from a participant in the Washington Metropolitan Area Transit Authority's (WMATA) MetroAccess program. The MetroAccess program is operated for the benefit of disabled individuals, and is WMATA's means of complying with the Americans with Disabilities Act of 1990,¹ which in pertinent part prohibits discrimination against the disabled by public transportation providers.

The MetroAccess program participant complained about the conditions in a vehicle in which she had been transported. The complaint states in part, "when I boarded the van I smelled a foul odor. It was terrible, not only did the van smell but the van was filthy. On the seat was stains. . . . Then to top it off, my morning pickup vehicle had no heat and it was 40 degrees."

The complainant identified an operator name and vehicle fleet number that links the van to respondent, Metro Health-Tech Services Inc., WMATC No. 589. Respondent is one of several carriers that currently have tariffs on file with the Commission to provide MetroAccess services. These carriers operate pursuant to subcontracts with MV Transportation, Inc., WMATC No. 764, which in-turn holds the primary contract with WMATA to operate the MetroAccess program.

After receiving the complaint and determining that respondent operated the vehicle that was the subject of the complaint, Commission staff issued a letter on November 9, 2007, directing respondent to file a current vehicle list and current safety inspection certificates for all vehicles on the list. The letter also directed respondent to

¹ 42 U.S.C. § 12101, et. seq. (2003).

present for inspection ten vehicles randomly selected by Commission staff. Respondent produced no safety inspection certificates and only two vehicles. Only one of the two vehicles passed inspection.

II. FORMAL INVESTIGATION AND RESPONSE

Upon respondent's failure to comply with staff's informal investigation, we initiated this formal investigation in Order No. 11,207 and directed respondent to file a current vehicle list within fifteen days and produce its vehicles for inspection by Commission staff within thirty days or face suspension and/or revocation of Certificate No. 589. Respondent subsequently produced a list of thirty-five vehicles and presented all but twelve for inspection. The twenty-three that were presented passed.

III. OUT OF SERVICE ORDER

Inasmuch as the twelve vehicles not presented failed to pass inspection within the thirty days allowed, those vehicles shall be declared out of service until such time as they pass inspection by Commission staff.²

IV. SHOW CAUSE ORDER

The Compact provides that a person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.³

In addition, the Commission may suspend or revoke all or part of any certificate of authority for willful failure to comply with a provision of the Compact, an order, rule, or regulation of the Commission, or a term, condition, or limitation of the certificate.⁴

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁵ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by intentional or careless disregard or plain indifference.⁶

Respondent shall have thirty days to show cause why the Commission should not assess a civil forfeiture against respondent,

² See *In re Zohery Tours Int'l, Inc.*, No. MP-02-46, Order No. 6911 at 5 (Nov. 18, 2002) (prohibiting operation of vehicles not presented for inspection).

³ Compact, tit. II, art. XIII, § 6(f).

⁴ Compact, tit. II, art. XI, § 10(c).

⁵ *In re Emanco Transp. Inc.*, No. MP-07-245, Order No. 11,304 (Apr. 24, 2008); *In re Junior's Enters., Inc.*, No. MP-01-103, Order No. 6549 (Feb. 21, 2002).

⁶ Order Nos. 11,304; 6549.

and/or revoke Certificate No. 589, for respondent's knowing and willful failure to present all vehicles for inspection.⁷

THEREFORE, IT IS ORDERED:

1. That respondent shall not operate the vehicles listed in Appendix A to this order unless and until they pass inspection, as confirmed by Commission staff in writing.

2. That within thirty days from the date of this order, respondent shall show cause why the Commission should not assess a civil forfeiture and/or suspend or revoke Certificate No. 589 for respondent's knowing and willful violation of Order No. 11,207.

3. That respondent may submit within 15 days from the date of this order a written request for oral hearing, specifying the grounds for the request, describing the evidence to be adduced and explaining why such evidence cannot be adduced without an oral hearing.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS YATES AND CHRISTIE:



William S. Morrow, Jr.
Executive Director

⁷ See *In re Emanco Transp. Inc.*, No. MP-07-245, Order No. 10,925 (Nov. 20, 2007) at 3 (same); Order No. 6549 at 4-5 (assessing forfeiture for failure to produce vehicles).

APPENDIX A
Out of Service List

Fleet No	VIN	Model Year	Make	Plate	State	Capacity
118	1FBJS31L9VHB60352	1997	Ford	B43939	MD	15
1002	2B6HB11Y8YK141906	2000	Dodge	29061B	MD	6
3534	1FBSS31L92HB22801	2002	Ford	39921B	MD	6
3552	1FBSS31L62HB22819	2002	Ford	41808B	MD	6
3575	1FBSS31L02HB32701	2002	Ford	39401B	MD	6
3576	1FBSS31L22HB32702	2002	Ford	39402B	MD	6
3592	1FBSS31L52HB75561	2002	Ford	B42530	DC	6
3593	1FBSS31L32HB80063	2002	Ford	39408B	MD	6
3594	1FBSS31L72HB80065	2002	Ford	B42529	DC	6
3596	1FBSS31L02HB80067	2002	Ford	39403B	MD	6
3615	1FBSS34565HA51530	2005	Ford	39910B	DC	6
3627	1FBSS31LX3HA25916	2003	Ford	CV6741	DC	6
3628	1FBSS31L33HA19911	2003	Ford	39405B	MD	6
3706	1FTSS34S05HA24033	2004	Ford	DC4611	DC	6
3707	1FTSS34S25HA24034	2004	Ford	DC4610	DC	6
3737	1FTSS34S65HA51530	2004	Ford	DC4609	DC	6
3740	1FTSS34S15HA51550	2004	Ford	DC4596	DC	6
4175	1FT2S34L28DA54428	2008	Ford	B43049	DC	6
4176	1FT2S34L48DA54429	2008	Ford	B43050	DC	6
4177	1FT2S34L08DA54430	2008	Ford	B43051	DC	6
4187	1FT2S34L58DA54441	2008	Ford	B43060	DC	6
4189	1FT2S34L98DA54443	2008	Ford	B43061	DC	6
4195	1FT2S34L58DA29247	2008	Ford	B43062	DC	6
4203	1FT2S34L78DA31761	2008	Ford	B43034	DC	6
4204	1FT2S34L28DA31747	2008	Ford	B43035	DC	6
4205	1FT2S34L08DA39538	2008	Ford	B43036	DC	6
4206	1FT2S34L68DA41752	2008	Ford	B43037	DC	6
4207	1FTSS34LX8DA31754	2008	Ford	B43039	DC	6
4208	1FTSS34L18DA31755	2008	Ford	B43038	DC	6
4209	1FTSS34L38DA31756	2008	Ford	B43040	DC	6
4210	1FTSS34L58DA31757	2008	Ford	B43041	DC	6
4211	1FTSS34L78DA31758	2008	Ford	B43042	DC	6
5527	1FTNS24L3YHA59122	2000	Ford	79555HV	MD	6